IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.04.2007
Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.1169 of 2004
& WAMP No.2198 of 2004

1.The Government of Tamil Nadu,
rep. by its Chief Secretary,
Fort St. George, Chennai-9.

2.The Secretary to Government of
Tamil Nadu,
Public (Law and Order) Department,
Fort St. George, Chennai-9.

3.The Secretary,
Government of Tamil Nadu,
Home Department,
Fort St. George, Chennai-9.

4.The Director General of Police,
Law and Order, Tamil Nadu,
Chennai-2.

5.The District Collector,
Tiruchirapalli,
Tiruchi-1. .. Appellants

Vs.

R.Dhanalakshmi .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.10.2003 made in W.P.No.13577 of 1996 presented to this Court under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to pay compensation of Rs.9 lakhs [Rypees nine lakhs only] to the petitioner and her two minor children and her old aged mother-in-law for the death of her husband due to police torture at Karur Police Station.

For Appellants : Mr.P.Subramanian,
Government Advocate
For Respondent : Mr.V.Ananthakrishnan

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

P. SATHASIVAM, J.

Aggrieved by the order of the learned single Judge dated 29.10.2003 made in W.P.No.13577 of 1996, the Government and their Officers preferred the above appeal.

2. For convenience, we shall refer the parties as arrayed in the writ petition.

3.The respondent herein/writ petitioner prayed for a writ of Mandamus directing the respondents-Government and their Officers to pay compensation of Rs.9,00,000/- to her and her two children as well as her aged mother-in-law for the death of her husband due to police torture at Karur Police Station, Trichirapalli District (Now Karur District). According to her, on 23.03.1995 at about 5.00 hours, her husband Rajmohan was taken into police custody by R.Eswaran, Sub Inspector of Police, Karur Police Station, from his house at Veeramalai Palayam, Kaniyalampatti Post, Chinthamanipatti and proceeded in a van towards Karur. Later on, he was tortured and beaten to death by the Sub Inspector of Police, Karur Police Station. The Sub Collector, conducted inquiry under Section 145 of the Police Standing Order. The post-mortem report issued by the Medical Officer, Government Hospital, Karur, revealed the fact that the victim died of Neurogenic shock due to pain caused by the injuries on the chest 10-14 hours prior to autopsy.

4. The deceased Rajmohan, the sole bread winner of the petitioner's family, is a victim of custodial death, leaving his entire family consisting of his wife, the writ petitioner, two sons and mother in a state of penury and starvation. The Government, by G.O.Ms.No.(N) 1069 Public (Law and Order) Department, dated 14.11.1995, sanctioned a sum of Rs.1,00,000/- from the Chief Minister's Public Relief Fund and the said amount was disbursed to the family through the Collector, Trichirappali on 21.01.1996.

5. The age of the victim at the time of cause of action is stated to be 29 years. He was a fleet owner operating a lorry bearing registration No.TNY 8681 and he was earning Rs.6,000/- per month through his lorry. The petitioner and her family members lost their only earning member. She sent a legal notice calling upon the official respondents for payment of Rs.9,00,000/- as compensation. Since there was no response, she filed the writ petition for appropriate direction.

6. The Collector, Karur District, has filed a counter affidavit, wherein it is stated that taking into account the claim of the petitioner and the family of the deceased, the Government paid ex-gratia amount of Rs.1,00,000/-, hence, the petitioner is not eligible for

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

further amount.

7. The Additional Secretary to Government, Public (L & O.A) Department, has filed a counter affidavit, wherein it is stated that taking note of the fact that the petitioner's husband is reported to have died under police custody and on the basis of the report of the Sub Collector, Karur, the Government have sanctioned a sum of Rs.1,00,000/- as compensation to the petitioner from the Chief Minister's Relief Fund and the said amount was paid to her on 17.01.1996. Inasmuch as the Government has already taken into consideration all factors and sanctioned a sum of Rs.1,00,000/- as compensation to the petitioner as per the existing norms, no further amount is permissible and the writ petition is liable to be dismissed.

8. The learned single Judge, after taking note of the monthly income and the age of the deceased, by applying the multiplier method as provided in the Motor Vehicles Act, directed the respondents to pay Rs.9,00,000/- as compensation. Questioning the said order, the Government and their Officers have filed the present writ appeal.

9. Heard Mr.P.Subramanian, learned Government Advocate for the appellants and Mr.V.Ananthakrishnan, learned counsel for the respondent.

10. The only point for consideration in this appeal is whether the learned single Judge is right in awarding compensation of Rs.9,00,000/- to the writ petitioner merely on the basis of the averment in the affidavit without any acceptable evidence?

11. There is no dispute that the husband of the petitioner viz., Rajmohan died in police custody on 23.03.1995. The post-mortem report and the enquiry report of the Sub Collector, Karur, conducted under Section 145 of the Police Standing Order, reveal that the deceased Rajmohan died in police custody.

12. It is the claim of the Government and their officers that as per G.O.Ms.No.153 Public (Law and Order-B) Department, dated 31.01.1998 in a case of (1) (a) death in Caste/communal clashes; (b) death due to Police torture; (c) death due to Police firing and (d) rape by police (2) permanent incapacitation, the Collectors are empowered to sanction relief to the extent of Rs.1,00,000/-. It is also their case that inasmuch as the said amount was paid to the writ-petitioner, she is not entitled for any further amount. In any event, according to them, in the absence of acceptable materials regarding the avocation, income and age of the deceased as well as his family circumstances, this Court cannot pass an award like a Civil Court by exercising jurisdiction under Article 226 of the Constitution of India.

13. In the affidavit filed in support of the writ petition, the petitioner, who is none else than the wife of the deceased, has stated

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that at the time of the cause of action, her husband was aged about 29 years, his date of birth being 08.05.1966. She also stated that her husband was a fleet owner, operating a lorry bearing registration No.TNY 8681. According to her, after deducting all expenses including insurance, fuel, maintenance etc, her husband was contributing Rs.6,000/- per month. It is also her claim that the deceased left two children aged about 7 years and 5 years respectively as well as the mother aged about 55 years. The learned single Judge, while considering the compensation to be awarded for death of the deceased aged about 29 years at the time of his death, by following the decisions of the Apex Court, adopted the multiplier theory. There is no dispute that in a motor vehicle accident, in order to arrive at a just and proper compensation in the case of death, the appropriate method to be applied is the multiplier method, as provided in the Schedule to the Motor Vehicles Act.

14. We have verified the factual details in the decisions relied on by the learned single Judge. All those cases relate to death in motor vehicle accidents. It is made clear that we are not under estimating the right or entitlement of the writ petitioner, who lost her family bread winner, while he was in police custody. Undoubtedly, she being the wife, her children and the mother, are entitled for adequate compensation. However, except mere statement in the affidavit that her husband was a fleet owner, operating a lorry, she has not furnished or enclosed the required materials such as registration certificate of the lorry or lorries, model, make, details regarding payment of income tax, information regarding continuance of lorry business. If she possessed the above mentioned particulars or documents, nothing prevented her from placing it either before the learned single Judge or before us. There is also no information as to the fact whether the petitioner re-married after the death of her husband Rajmohan. Bereft of all those relevant materials, we are of the view that the award of Rs.9,00,000/- as compensation is undoubtedly on the higher side. Merely because the respondents have not specifically denied all the above referred to details and sanctioned a sum of Rs.1,00,000/- from the Chief Minister's Relief Fund, it cannot be presumed that they accepted the avocation and income of the deceased. In the absence of such materials, we are of the view that lump sum amount cannot be granted as ordered by the learned single Judge.

15. Taking note of the fact that the deceased, aged about 29 years, died in police custody and of the fact that he left his wife, aged about 27 years, two children, aged about 7 and 5 years respectively as well as the mother, aged about 55 years, we are of the view that ends of justice would be met by awarding a compensation of Rs.5,00,000/- (Rupees five lakhs only) to the petitioner. It is brought to our notice that apart from payment of Rs.1,00,000/- by the District Collector, Karur, from the Chief Minister's Relief Fund, on the orders of the Division Bench of this Court, a sum of Rs.2,00,000/- was also paid to the writ petitioner by way of crossed Demand Draft on 05.04.2004. In view of the same, the balance amount payable to the writ petitioner is only Rs.2,00,000/-. Inasmuch as

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

a sum of Rs.3,00,000/- was paid to the writ petitioner, the Government is directed to pay the balance amount of Rs.2,00,000/- to the petitioner as ordered above within a period of eight weeks from the date of receipt of a copy of this order. If the petitioner has sufficient materials in the form of acceptable evidence and if she desires, she is free to approach the Civil Court. It is made clear that the time taken for prosecuting the writ petition and writ appeal shall be excluded for the purpose of limitation.

16. With the above observation, the writ appeal is allowed in part. No costs. Consequently, WAMP No.2198 of 2004 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

raa

To

1.The Chief Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

2.The Secretary to Government of
Tamil Nadu, Public (Law and Order) Department,
Fort St. George, Chennai-9.

3.The Secretary, Government of Tamil Nadu,
Home Department,
Fort St. George, Chennai-9.

4.The Director General of Police,
Law and Order, Tamil Nadu,
Madras-2.

5.The District Collector,
Tiruchirapalli, Tiruchi-1.
+ 1 CC to the Government Pleader SR NO 23339

W.A.No.1169 of 2004

mbs[co]
Gp/17.4

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/